

AN ACT

RELATING TO HEALTH; AMENDING SECTIONS OF THE CAREGIVERS
CRIMINAL HISTORY SCREENING ACT; CLARIFYING DEFINITIONS;
ADDING ADDITIONAL DISQUALIFYING CONVICTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 29-17-4 NMSA 1978 (being Laws 1998,
Chapter 68, Section 3) is amended to read:

"29-17-4. DEFINITIONS.--As used in the Caregivers
Criminal History Screening Act:

A. "applicant" means a person who seeks and is
offered employment or contractual service as a caregiver
with a care provider;

B. "caregiver" means a person, not otherwise
required to undergo a nationwide criminal history screening
by the New Mexico Children's and Juvenile Facility Criminal
Records Screening Act, whose employment or contractual
service with a care provider includes direct care or routine
and unsupervised physical or financial access to any care
recipient served by that provider;

C. "care provider" or "provider" means a skilled
nursing facility; an intermediate care facility; a care
facility for the mentally retarded; a psychiatric facility;
a rehabilitation facility; a home health agency; a homemaker
agency; a home for the aged or disabled; a group home; an
adult foster care home; a guardian service provider; a case
management entity that provides services to people with
developmental disabilities; a private residence that
provides personal care, adult residential care or nursing
care for two or more persons not related by blood or

marriage to the facility's operator or owner; an adult daycare center; a boarding home; an adult residential care home; a residential service or habilitation service authorized to be reimbursed by medicaid; any licensed or medicaid-certified entity or any program funded by the state agency on aging that provides respite, companion or personal care services; or programs funded by the children, youth and families department that provide homemaker or adult daycare services. "Care provider" or "provider" does not include general acute care hospitals, resident care facilities located at or performing services exclusively for any correctional facility, outpatient treatment facilities, diagnostic and treatment facilities, ambulatory surgical centers and facilities, end-stage renal dialysis and treatment facilities, rural health clinics, private physicians' offices or other clinics that operate in the same manner as private physicians' offices in group practice settings;

D. "care recipient" means any person under the care of a provider who has a physical or mental illness, injury or disability or who suffers from any cognitive impairment that restricts or limits the person's activities;

E. "nationwide criminal history screening" means a criminal history background investigation of an applicant or caregiver through the use of fingerprints collected by the department of public safety and submitted to the federal bureau of investigation, resulting in generation of a nationwide criminal history record for that applicant or caregiver; and

F. "nationwide criminal history record" means

information concerning a person's arrests, indictments or other formal criminal charges and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications system, the department of public safety or the repositories of criminal history information of other states."

Section 2. Section 29-17-5 NMSA 1978 (being Laws 1998, Chapter 68, Section 4) is amended to read:

"29-17-5. CRIMINAL HISTORY SCREENING REQUIRED--REGULATORY IMPLEMENTATION--APPEALS.--

A. The department of health is authorized to receive an applicant's or caregiver's nationwide criminal history record obtained by the department of public safety as a result of a nationwide criminal history screening pursuant to an applicant's or caregiver's authorization for such nationwide criminal history screening. Providers shall submit a set of fingerprints of applicants and caregivers to the department of health for a nationwide criminal history screening, and the department of public safety shall accept from the department of health such fingerprints for the purpose of conducting a nationwide criminal history screening.

B. The department of health is authorized to promulgate regulations to implement the Caregivers Criminal History Screening Act, including regulations establishing a three-year phased implementation based upon provider type; fingerprint submission procedures; fees; confidentiality;

timeframes for an applicant's or caregiver's nationwide criminal history screening; procedures for clarifying incomplete or confusing criminal history information; provider sanctions for noncompliance; and employment procedures pending the results of the nationwide criminal history screening relating to applicants and caregivers.

C. No caregiver may be employed by a care provider unless the caregiver first has submitted to a request for a nationwide criminal history screening prior to beginning employment in accordance with procedures established by regulation by the departments of health and public safety or unless the caregiver has submitted to a nationwide criminal history screening and has been cleared within the previous twelve months.

D. The following felony convictions disqualify an applicant or caregiver from employment as a caregiver:

- (1) homicide;
- (2) trafficking controlled substances;
- (3) kidnapping, false imprisonment, aggravated assault or aggravated battery;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure or other related sexual offenses;
- (5) crimes involving adult abuse, neglect or financial exploitation;
- (6) crimes involving child abuse or neglect; or
- (7) robbery, larceny, extortion, forgery, embezzlement, credit card fraud or receiving stolen property.

E. Upon receipt by the department of health of the results of the applicant's or caregiver's nationwide criminal history screening, the department of health shall give notice to the submitting care provider whether or not the applicant or caregiver has a disqualifying conviction of a crime specified in Subsection D of this section. No other results of the applicant's or caregiver's nationwide criminal history screening shall be provided to the care provider. Except as provided in Subsection F of this section, a care provider shall not employ an applicant or continue to employ a caregiver whose nationwide criminal history screening record reflects a disqualifying conviction. When the department of health provides notice to the care provider of a disqualifying conviction of a crime specified in Subsection D of this section, it shall also notify the applicant or caregiver, stating with specificity the convictions on which its decision is based and identifying the agency that provided the records.

F. An applicant or caregiver whose nationwide criminal history record, obtained through the applicant's or caregiver's nationwide criminal history screening and other clarifying endeavors of the department of health, reflects a disqualifying conviction of a crime specified in Subsection D of this section may request from the department of health an administrative reconsideration. The care provider may, in its discretion, continue to employ such person during the pendency of the reconsideration. A care provider may employ the applicant or caregiver if the reconsideration proceeding results in a determination by the department of health that the applicant's or caregiver's nationwide criminal history

record inaccurately reflects a disqualifying conviction of a crime specified in Subsection D of this section or that the employment presents no risk of harm to a care recipient or that the conviction does not directly bear upon the applicant's or caregiver's fitness for the employment.

G. The department of health is authorized to adopt regulations for the administrative reconsideration proceeding available to an applicant or caregiver whose nationwide criminal history record reflects a disqualifying conviction. The regulations shall take into account the requirements of the Criminal Offender Employment Act.

H. A care provider shall maintain records evidencing compliance with the requirements of this section with respect to all applicants and caregivers employed on or after May 20, 1998.

I. All criminal history records obtained pursuant to this section by the department of health are confidential. No criminal history records obtained pursuant to this section shall be used for any purpose other than determining whether an applicant or caregiver has a criminal conviction that would disqualify him from employment as a caregiver. Except on court order or with the written consent of the applicant or caregiver, criminal records obtained pursuant to this section and the information contained therein shall not be released or otherwise disclosed to any other person or agency. A person who discloses confidential records or information in violation of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Subsection A of Section 31-19-1 NMSA 1978.

J. The department of health shall maintain a registry of all applicants who are disqualified from employment or contractual service as caregivers. An applicant's arrest record information shall not be released except upon request of the applicant as provided in the Arrest Record Information Act.

K. A care provider, including its administrators and employees, is not civilly liable to an applicant or a caregiver for a good faith decision to employ, not employ or terminate employment pursuant to the Caregivers Criminal History Screening Act.

L. Failure to comply with the requirements of this section are grounds for the state agency having enforcement authority with respect to the care provider to impose appropriate administrative sanctions and penalties." ==
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